

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ZACH McGUIRE, ET AL.**

**v.  
KENOMA, LLC, ET AL.**

**RESPONDENTS,**

**APPELLANTS.**

---

DOCKET NUMBER WD74022

DATE: June 26, 2012

---

Appeal From:

Henry County Circuit Court  
The Honorable James K. Journey, Judge

---

Appellate Judges:

Division Three: Thomas H. Newton, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

---

Attorneys:

Charles F. Speer, Kansas City, MO and Edward D. Robertson, Jr. and Anthony L. Dewitt,  
Jefferson City, MO, for respondents.

Mark W. Comley, Jefferson City, MO, for appellants.

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**ZACH McGUIRE, ET AL.,**

**RESPONDENTS,**

**v.**

**KENOMA, LLC, ET AL.,**

**APPELLANTS.**

No. WD74022

Henry County

Before Division Three: Thomas H. Newton, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

Synergy, LLC and Kenoma, LLC appeal following a jury trial on claims of temporary nuisance which resulted in a judgment for damages in favor of Respondents. Synergy operates large scale hog farms in Barton County, Missouri. The Respondents/Plaintiffs in this case are twelve individuals who filed suit against Synergy claiming that its confined animal farming operations ("CAFO"), in this case hog farming operations, in Barton County constituted a temporary nuisance to the Plaintiff's neighboring property, beginning in 2007.

This hog farming operation was structured in the following manner: Kenoma operates a sow farrowing barn in Barton County, Missouri. The hogs located in the barn, and the pigs born to those hogs, are owned by Synergy. After the piglets are weaned from the sows in the Kenoma facility they are transferred to nurseries. Two of the nurseries to which the piglets are transferred are owned and operated by Wayne Nichols and Marcel Fischbacher. Wayne Nichols and Marcel Fischbacher operated nurseries under contracts with Synergy. Paul Stefan owns the land and an irrigation system on that land where the effluent from the Kenoma wastewater lagoon is applied.

Plaintiff's claimed that these CAFO's emitted foul smelling odors, other omissions and flies onto their individual farms and/or homes and substantially impaired the Plaintiff's ability to use and enjoy their respective properties. After a two week trial in April and May of 2011, the jury returned a verdict in favor of Plaintiffs. The jury awarded compensatory damages to twelve of the Plaintiffs, as outlined below:

<b>Plaintiff</b>	<b>Against Defendant(s)</b>	<b>Verdict</b>	<b>Amount</b>
Zach McGuire	Synergy/Kenoma	A-1	\$225,000
Debbie Jo McGuire	Synergy/Kenoma	B-1	\$225,000
Darvin Bentlage	Synergy (Nichols nursery)	C-3	\$75,000
Darvin Bentlage	Synergy (Fischbacher nursery)	C-4	\$75,000
Darvin Bentlage	Synergy (Fischbacher nursery)	C-6	\$75,000
Patricia Bentlage	Synergy (Nichols nursery)	D-3	\$75,000
Patricia Bentlage	Synergy (Fischbacher nursery)	D-4	\$75,000
Patricia Bentlage	Synergy (Fischbacher nursery)	D-6	\$75,000

Gregory Harris	Synergy/Kenoma	E-1	\$325,000
Walter Howry	Synergy/Kenoma	F-1	\$75,000
Cindy Howry	Synergy/Kenoma	G-1	\$75,000
Dale Huber	Synergy/Kenoma	H-1	\$175,000
Carol Huber	Synergy/Kenoma	I-1	\$175,000
Kevin Huber	Synergy/Kenoma	J-1	\$175,000
William Manka	Synergy/Kenoma	K-1	\$25,000
Helen Manka	Synergy/Kenoma	L-1	\$25,000

## **AFFIRMED IN PART, REVERSED IN PART**

### **Division Three holds:**

On appeal, Synergy brings ten Points Relied On. We affirm the trial court as it pertains to eight of these points, for the reasons explained in detail in the opinion. However, we grant Synergy’s sixth and seventh Points Relied On for the following reasons.

In Point Six, Synergy argues that the “trial court committed plain error in receiving and then entering judgment upon verdicts for Darvin and Patricia Bentlage against Synergy respecting the Fischbacher nursery because the verdicts awarded redundant damages – a double recovery—in that the jury twice awarded damages to the Bentlages for the same claim of nuisance.”

Here, it is not disputed by Synergy that it did not properly preserve this claim for our review by timely making an objection pertaining to the verdict. It is also not disputed that the jury awarded two separate \$75,000 nuisance verdicts to Patricia Bentlage: the first \$75,000 nuisance verdict was based on Synergy’s direct liability in utilizing the Fischbacher nursery; the second \$75,000 nuisance verdict was based on Synergy’s liability for the Fischbacher nursery because it was “operating a hog nursery within the scope and course of [their] agency for Synergy.” In an identical fashion, the jury also awarded two separate \$75,000 nuisance verdicts to Darvin Bentlage.

A party is not entitled to be made more than whole or receive more than one full recovery for the same harm. Thus, if the damages for two causes of action are the same, then the damage award merges. Missouri law is clear that this type of double recovery constitutes plain error, which constitutes a manifest injustice. Because we conclude that a manifest injustice resulted in that Patricia Bentlage *and* Darvin Bentlage both receiving double recoveries on their duplicative nuisance claims against Synergy, this Court must take the corrective action of ordering that only one \$75,000 nuisance judgment stand in each of their individual favor against Synergy; the second such judgment is hereby reversed pursuant to our authority under Rule 84.14.

Point Six is granted.

In Point Seven, Synergy argues that the trial court erred “in denying Synergy’s motion to amend requesting that the verdicts entered against Synergy and in favor of Plaintiffs Bentlage be

reduced by the amount of the settlement agreements reached with former defendants Nichols and Fischbacher because Synergy met its burden of showing that it is entitled to a reduction under Section 537.060 in that Wayne Nichols and Marcel Fischbacher are, by operation of the verdicts rendered, jointly liable with Synergy for the injury purportedly suffered by Plaintiffs Bentlage as a result of the alleged nuisance.”

Section 537.060 implements the common law rule that a plaintiff is entitled to one satisfaction for a wrong. Under common law, when a judgment for a wrong is rendered against one who is a joint tortfeasor, and the judgment is satisfied, the plaintiff cannot recover another satisfaction for the same wrong. On appeal, plaintiffs do not dispute that the predicate substantive requirements pursuant to Section 537.060 were met by Synergy in seeking the reduction of the judgment based on the settlements before the trial court in its Motion to Amend Judgment. Plaintiffs do not argue that there was anything to submit to the jury in regard to this issue. Instead, plaintiffs argue that the trial court was justified in denying Synergy’s motion to amend the judgment based on how the reduction based on the settlement evidence was procedurally presented before the trial court. Synergy did not plead facts necessary to support its affirmative defense. However, the settlements were not entered into until part way through the trial and therefore, the facts necessary to support the affirmative defense did not exist until it was too late to amend the answer and properly allege the facts necessary to support the affirmative defense.

In denying the reduction, the trial court ruled that Synergy “failed in its burden to prove its affirmative defense of set off [reduction].” But it is undisputed that in its motion to amend the judgment, Synergy attached the relevant settlement documentation that irrefutably proved that the underlying settlement in fact occurred. Specifically, both Darvin and Patricia Bentlage entered into a settlement with Wayne Nichols for the amount of \$105,000 for *each of these plaintiffs*. Furthermore, Darvin and Patricia Bentlage entered into a settlement with Marcel Fischbacher for the total amount of \$140,000. Accordingly, because plaintiffs on appeal *do not dispute* that Synergy was a “joint tortfeasor” with both Wayne Nichols and Marcel Fischbacher for the “single indivisible harm” that was caused by Synergy’s utilization of their farms in their CAFO operations, we conclude that the trial court erred as a matter of law in failing to enter an order granting the reduction.

We grant relief pursuant to Rule 84.14, to reduce the awards to the Bentlages based on the settlements.

Point Seven is granted.

The remainder of the trial court’s judgment is affirmed for the grounds articulated at length in the opinion.

Opinion by Gary D. Witt, Judge

June 26, 2012

\*\*\*\*\*

This summary is UNOFFICIAL and should not be quoted or cited.